

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MASTER BAYE BALAH ALLAH,

Plaintiff,

-against-

CAROLYN W. COLVIN,
Acting as Commissioner of Social Security,

Defendant.

15-cv-6099 (NSR)(JCM)

ORDER ADOPTING REPORT
AND RECOMMENDATION

NELSON S. ROMÁN, United States District Judge:

Plaintiff Master Baye Balah Allah (“Plaintiff”) commenced this action pursuant to 42 U.S.C. § 405(g) and/or 42 U.S.C. § 1383(c)(3), challenging the decision of the Commissioner of Social Security (“the Commissioner”), which denied Plaintiff’s applications for disability insurance benefits (“DIB”) and Supplemental Security Income (“SSI”) benefits, finding him not disabled. This case was previously referred to Magistrate Judge Judith C. McCarthy. Currently pending in this case are (1) the Commissioner’s Motion for Judgment on the Pleadings and to affirm the Commissioner’s decision, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure (“Rule 12(c)”), (Docket Nos. 14, 15, 25); and (2) Plaintiff’s opposition to the Commissioner’s Motion for Judgment on the Pleadings, (Docket Nos. 24, 27). On December 20, 2016, Magistrate Judge McCarthy issued a Report and Recommendation (“R & R”), pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), recommending that the Commissioner’s Motion for Judgment on the Pleadings be denied, that the Commissioner’s decision be vacated, and that the case be remanded for further administrative proceedings consistent with the R & R. (See Docket No. 28.) For the following reasons, the Court adopts Magistrate Judge McCarthy’s R & R in its

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entirety. As such, the Commissioner's Motion for Judgment on the Pleadings and to affirm the Commissioner's decision is DENIED.

BACKGROUND

Plaintiff seeks to challenge the Commissioner's decision denying Plaintiff's applications for disability insurance benefits ("DIB") and Supplemental Security Income ("SSI") benefits. The Court assumes familiarity with the underlying facts and prior proceedings in this case, as set forth in the R & R. Plaintiff commenced the instant action on August 3, 2015. Defendant moved for judgment on the pleadings and to affirm its decision on March 16, 2016. On December 20, 2016, Magistrate Judge McCarthy issued the R & R recommending that this Court deny the Commissioner's motion, vacate the underlying decision, and remand for further administrative proceedings consistent with the R & R. Neither party has filed written objections to the R & R.

STANDARD OF REVIEW

A magistrate judge may "hear a pretrial matter dispositive of a claim or defense" if so designated by a district court. *See Fed. R. Civ. P. 72(b)(1); accord 28 U.S.C. § 636(b)(1)(B).* In such a case, the magistrate judge "must enter a recommended disposition, including, if appropriate, proposed findings of fact." *Fed. R. Civ. P. 72(b)(1); accord 28 U.S.C. § 636(b)(1).* Where a magistrate judge issues a report and recommendation,

[w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b)(1); *accord Fed. R. Civ. P. 72(b)(2), (3).* However, "[t]o accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Wilds v. United Parcel*

Serv., Inc., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)); *accord Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008) (“[F]ailure to object timely to a magistrate’s report operates as a waiver of any further judicial review of the magistrate’s decision.”) (*quoting Small v. Sec. of HHS*, 892 F.2d 15, 16 (2d Cir. 1989)); *see also* Fed. R. Civ. P. 72 advisory committee note (1983 Addition, Subdivision (b)) (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

DISCUSSION

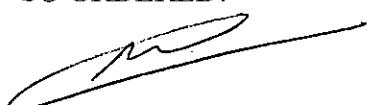
Here, as neither party objected to the R & R issued by Magistrate Judge McCarthy, the Court reviews the recommendation for clear error. The Court finds no error on the face of the R & R, and thus adopts Judge McCarthy’s R & R in its entirety.

CONCLUSION

For the reasons stated above, the Court adopts Magistrate Judge McCarthy’s Report and Recommendation in its entirety, and DENIES Defendant’s motion for judgment on the pleadings. The Commissioner’s decision is vacated and remanded for further administrative proceedings in accordance with the R & R. As such, Plaintiff’s motion for change of venue is deemed moot. The Clerk of Court is respectfully directed to terminate the motions at ECF No. 14 and 23.

Dated: March 31, 2017
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge